

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:F:BOS:POSTF-155791-01

BJLaterman

date:

1/23/02

to: Group [REDACTED], Territory [REDACTED]
Financial Services: LMSB: [REDACTED]

from: Associate Area Counsel, Boston
CC:LMSB:FS:Boston

in re:

[REDACTED] (now known as [REDACTED])

Forms 872

Taxable Years ended March 28, [REDACTED], March 31, [REDACTED]
and March 31, [REDACTED]

This is in response to your request that we give advice regarding extending the statute of limitations for the above-mentioned consolidated group's taxable years ended March 28, [REDACTED], March 31, [REDACTED] and March 31, [REDACTED]. In an E-mail on January 4, 2002, you indicated that you will not need an opinion on the [REDACTED] and [REDACTED] taxable years since you have relied on the Richmond Area Counsel (LMSB) statute extension advice memorandum of September 22, 1999. This memorandum should not be cited as precedent.

[REDACTED] is a Delaware corporation formed on [REDACTED] which was indirectly owned by [REDACTED], a United Kingdom corporation, through intermediary holding companies, [REDACTED] Ltd. and [REDACTED] Inc. and its subsidiaries (with [REDACTED] Inc as parent) filed consolidated federal income tax returns for the taxable years ended March 30, [REDACTED] and March 28, [REDACTED]. On or about [REDACTED], [REDACTED] Inc. changed its name to [REDACTED] Inc. Both [REDACTED] Inc. and [REDACTED] Inc. have the same EIN ([REDACTED]). Consolidated returns were filed by [REDACTED] Inc. and Subsidiaries for the taxable years ended March 31, [REDACTED] and March 29, [REDACTED].¹

[REDACTED] Inc. is a U.S. corporation formed on [REDACTED] which was also indirectly owned by [REDACTED]

¹The return for the year ended March 31, [REDACTED] was filed by [REDACTED] Inc. and Subsidiaries F/K/A [REDACTED] Inc. and Subsidiaries.

through [REDACTED] Ltd., a direct subsidiary of [REDACTED] Inc. and Subsidiaries (with [REDACTED] Inc. as parent) filed consolidated federal income tax returns for the taxable years ending March 30, [REDACTED] and March 29, [REDACTED]. On [REDACTED], [REDACTED] Ltd. transferred [REDACTED]% of the stock of [REDACTED] Inc. to [REDACTED] Inc. in exchange for [REDACTED] Inc. stock. Richmond Area Counsel (LMSB), in a memorandum dated September 22, 1999, gave advice regarding extending the [REDACTED] Inc. and Subsidiaries [REDACTED] and [REDACTED] taxable years. You have requested advice regarding extending the returns filed by the [REDACTED] Inc. (now known as [REDACTED] Inc.) and Subsidiaries consolidated group for the [REDACTED], [REDACTED] and [REDACTED] taxable years.

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters related to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Furthermore, the provisions of Treas. Reg. § 1.1502-77(a) shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect to the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary, which was a member of the consolidated group during any part of the consolidated return year, is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

In this case, the common parent, [REDACTED] Inc., now known as [REDACTED] Inc., is still in existence and, therefore, it is still the agent for the consolidated group under the provisions of Treas. Reg. § 1.1502-77(a). The caption on the Form 872 for the taxable year ended March 28, [REDACTED] should be: [REDACTED] Inc. (EIN) & Subsidiaries formerly known as [REDACTED] Inc. (EIN) & Subsidiaries.* At the bottom of the page you should add: [REDACTED] Inc. formerly known as [REDACTED] Inc. has executed the Form 872 as agent for the [REDACTED] Inc. formerly known as [REDACTED] Inc. and Subsidiaries consolidated group for its [REDACTED]

taxable year. With regard to the taxable years ended March 31, [REDACTED] and March 31, [REDACTED], the Form 872 should be solicited from [REDACTED] Inc., the common parent for these taxable years. The caption on the Form 872 for the taxable year ended March 31, [REDACTED] should be [REDACTED] Inc. and Subsidiaries F/K/A [REDACTED] Inc. and Subsidiaries² and for the taxable year ended March 31, [REDACTED], the caption on the Form 872 should be [REDACTED] Inc. and Consolidated Subsidiaries; i.e., the name reflected on the returns for said taxable years. Therefore, based on the facts provided we conclude that Forms 872 executed by a current officer of [REDACTED] Inc., the still existing parent of the group, will extend the period for assessment of tax for the taxable years ended March 28, [REDACTED], March 31, [REDACTED] and March 31, [REDACTED].

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual(IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treas.Reg. §301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that §3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. §6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy the requirement, Publication 1035, "Extending the Tax Assessment Period," must be given when you solicit the statute extension.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If

²It is noted that the return for the year ended March 31, [REDACTED] was filed(pursuant to an extension)after the [REDACTED] name change from [REDACTED] Inc. to [REDACTED] Inc.

If we can be of any further assistance, the undersigned can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant